

SENATE, No. 1750

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JULY 2, 2002

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)

SYNOPSIS

Amends Criminal Code provisions concerning forfeiture; repeals section 17-17 of P.L.1950, c.210.

CURRENT VERSION OF TEXT

As introduced.



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2

1 **AN ACT** concerning forfeiture of public office, amending N.J.S.2C:51-
2 2 and repealing section 17-17 of P.L.1950, c. 210.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.2C:51-2 is amended to read as follows:

8 2C:51-2. Forfeiture of Public Office. a. A person holding any
9 public office, position, or employment, elective or appointive, under
10 the government of this State or any agency or political subdivision
11 thereof, who is convicted of an offense shall forfeit such office or
12 position if:

13 (1) He is convicted under the laws of this State of an offense
14 involving dishonesty or of a crime of the third degree or above or
15 under the laws of another state or of the United States of an offense
16 or a crime which, if committed in this State, would be such an offense
17 or crime;

18 (2) He is convicted of an offense involving or touching such office,
19 position or employment; or

20 (3) The Constitution [or a statute other than the code] so
21 provides.

22 b. A court of this State shall enter an order of forfeiture pursuant
23 to subsection a.:

24 (1) Immediately upon a finding of guilt by the trier of fact or a plea
25 of guilty entered in any court of this State unless the court, for good
26 cause shown, orders a stay of such forfeiture pending a hearing on the
27 merits at the time of sentencing; or

28 (2) Upon application of the county prosecutor or the Attorney
29 General, when the forfeiture is based upon a conviction of an offense
30 under the laws of another state or of the United States. An order of
31 forfeiture pursuant to this paragraph shall be deemed to have taken
32 effect on the date the person was found guilty by the trier of fact or
33 pled guilty to the offense.

34 c. No court shall grant a stay of an order of forfeiture pending
35 appeal of a conviction or forfeiture order unless the court is clearly
36 convinced that there is a substantial likelihood of success on the
37 merits. If the conviction be reversed or the order of forfeiture be
38 overturned, he shall be restored, if feasible, to his office, position or
39 employment with all the rights, emoluments and salary thereof from
40 the date of forfeiture.

41 Any official action taken by the convicted person on or after the
42 date as of which a forfeiture of the person's office shall take effect
43 shall, during a period of 60 days following the date on which an order

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 of forfeiture shall have been issued hereunder, be voidable by the
2 person's successor in office or, if the office of the person was that of
3 member of the governing body of a county, municipality or
4 independent authority, by that governing body.

5 d. In addition to the punishment prescribed for the offense, and the
6 forfeiture set forth in subsection a. of N.J.S.2C:51-2, any person
7 convicted of an offense involving or touching on his public office,
8 position or employment shall be forever disqualified from holding any
9 office or position of honor, trust or profit under this State or any of its
10 administrative or political subdivisions.

11 e. Any forfeiture or disqualification under subsection a., b. or d.
12 which is based upon a conviction of a disorderly persons or petty
13 disorderly persons offense may be waived by the court upon
14 application of the county prosecutor or the Attorney General and for
15 good cause shown.

16 f. Except as may otherwise be ordered by the Attorney General as
17 the public need may require, any person convicted of an offense under
18 section 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7, 2C:29-4, 2C:30-2, or
19 2C:30-3 of this Title shall be ineligible, either directly or indirectly, to
20 submit a bid, enter into any contract, or to conduct any business with
21 any board, agency, authority, department, commission, public
22 corporation, or other body of this State, of this or one or more other
23 states, or of one or more political subdivisions of this State for a
24 period of, but not more than, 10 years from the date of conviction for
25 a crime of the second degree, or five years from the date of conviction
26 for a crime of the third degree. It is the purpose of this subsection to
27 bar any individual convicted of any of the above enumerated offenses
28 and any business, including any corporation, partnership, association
29 or proprietorship in which such individual is a principal, or with
30 respect to which such individual owns, directly or indirectly, or
31 controls 5% or more of the stock or other equity interest of such
32 business, from conducting business with public entities.

33 The State Treasurer shall keep and maintain a list of all
34 corporations barred from conducting such business pursuant to this
35 section.

36 g. In any case in which the issue of forfeiture is not raised in a
37 court of this State at the time of a finding of guilt, entry of guilty plea
38 or sentencing, a forfeiture of public office, position or employment
39 required by this section may be ordered by a court of this State upon
40 application of the county prosecutor or the Attorney General or upon
41 application of the public officer or public entity having authority to
42 remove the person convicted from his public office, position or
43 employment. The fact that a court has declined to order forfeiture
44 shall not preclude the public officer or public entity having authority
45 to remove the person convicted from seeking to remove or suspend
46 the person from his office, position or employment on the ground that

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1 the conduct giving rise to the conviction demonstrates that the person
2 is unfit to hold the office, position or employment.

3 (cf: P.L.1995,c.250,s.1)

4

5 2. Section 17-17 of P.L.1950, c. 210 (C.40:69A-166) is hereby
6 repealed.

7

8 3. This act shall apply as follows:

9 a. Any person who forfeited or was disqualified from holding any
10 public office, position, or employment, elective or appointive, under
11 the government of this State or any agency or political subdivision
12 thereof, by a court of competent jurisdiction, prior to the effective
13 date of this act shall continue to be disqualified or continue to forfeit
14 such office, position or employment.

15 b. Any person holding any public office, position, or employment,
16 elective or appointive, under the government of this State or any
17 agency or political subdivision thereof, on the effective date of this act,
18 shall be subject to disqualification or forfeiture of that public office,
19 position, or employment only pursuant to N.J.S.2C:51-2 and not
20 pursuant to a statute other than the criminal code.

21

22 4. This act shall take effect immediately.

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25 **STATEMENT**

26

27 The bill amends N.J.S.A.2C:51-2 to provide that a person will be
28 disqualified from public office, position or employment only as
29 provided in the Criminal Code and in the Constitution. The bill
30 remedies disparities among the statutes concerning forfeiture of public
31 office, position or employment in order to be consistent with the
32 Criminal Code.

33 The Criminal Code, in N.J.S.A.2C:51-2, provides that a person
34 holding any public office, position or employment must forfeit the
35 office or position if he is: (1) convicted of an offense involving
36 dishonesty; (2) convicted of a crime of the third degree or above; (3)
37 convicted of an offense involving or touching his office, position or
38 employment, or (4) if the Constitution or a statute other than the
39 Criminal Code so provides. In addition to these provisions concerning
40 forfeiture, the Criminal Code also provides that a person who is
41 convicted of an offense involving or touching on his public office,
42 position or employment will be permanently disqualified from ever
43 holding "any office or position of honor, trust or profit under this
44 State or any of its administrative or political subdivisions."

45 However, other statutes conflict with this provision. For example,
46 a portion of the Optional Municipal Charter Law (also known as the

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1 "Faulkner Act"), which applies to only a minority of the State's 566
2 municipalities, provides that a person "convicted of a crime or offense
3 involving moral turpitude" shall forfeit "any municipal office, position
4 or employment in a municipality governed pursuant this act [the
5 Faulkner Act]" and that such conviction would also disqualify the
6 person from assuming such office, position or employment in the
7 future.

8 Because of these conflicting statutes, public officials are held to
9 inconsistent standards depending on the municipality where they
10 happen to serve. This bill is intended to rectify this confusing and
11 unjust situation by providing that the Criminal Code provisions
12 concerning forfeiture and disqualification for public office will be the
13 only standard.

14 The sponsor wants to underscore the policy considerations
15 implicated by this bill. Given the many and varied forms of municipal
16 government (for example, commission, special charter, municipal
17 manager, township, borough), it is paramount to insure that all
18 municipal officials are subject to the same standards throughout the
19 State concerning their eligibility to hold office.